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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 JOSE CASTELLANOS,

21 Plaintiff,

22 v.

23 THE PEPSI BOTTLING GROUP, AND
DOES 1 THROUGH 100, INCLUSIVE,

24 Defendants.
25
26
27
28

Case No. c 07-03961 WHA

[Complaint Filed: June 26, 2007]

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT OF
DEFENDANT THE PEPSI BOTTLING
GROUP, INC. AND PLAINTIFF JOSE
CASTELLANOS**

Date: November 1, 2007
Time: 11:00 a.m.
Crtrm: 9

1 Defendant The Pepsi Bottling Group, Inc. ("PBG") and Plaintiff Jose Castellanos
2 ("Plaintiff") (collectively "the Parties") hereby submit the following Joint Case
3 Management Conference Statement in accordance with the Standing Order for All Judges
4 of the Northern District of California.

5
6 1. JURISDICTION AND SERVICE
7

8 PBG's Position: PBG believes jurisdiction exists under the Class Action Fairness
9 Act. PBG believes the allegations in the Complaint describe claims that would exceed five
10 million dollars, if those allegations were true. This is true even excluding the purported
11 class members who already released their claims pursuant to two other related class actions
12 that have been resolved (see cases described in No. 10, below). However, PBG denies the
13 allegations in the Complaint are true.

14
15 Plaintiff's Position: This case was filed in Alameda County alleging violations of
16 California law. Defendant removed the case to this court under the Class Action Fairness
17 Act. At the time this case was filed Plaintiff was unaware of other pending cases raising
18 issues also alleged in this case (see cases described in No. 10, below). In light of the
19 related cases and the pending settlement, Plaintiffs believe this case will not have a
20 residual value anywhere near the CAFA threshold of five million dollars.

21
22 The Parties agree that no issues exist regarding personal jurisdiction or venue and
23 no parties remain to be served.

24
25 2. FACTS
26

27 Plaintiff alleges PBG failed to provide meal periods and rest breaks to certain non-
28 exempt employees who work within PBG's Direct Store Delivery ("DSD") system and

1 failed to pay these employees for all hours worked. The Complaint alleges these claims on
2 behalf of all employees within the DSD system, but per No. 10 below, portions of this
3 purported class were settled as part of two other class action suits.

4
5 The principal factual issues in dispute are whether and to what extent members of
6 the purported class did not receive all meal periods and rest breaks to which they were
7 entitled and whether and to what extent members of the purported class were not paid for
8 all hours worked.

9
10 Should final approval be granted in the related cases, then the claims remaining in
11 this lawsuit will be claims for meal period and rest break penalties and claims for unpaid
12 hours worked on behalf of a putative class of relief salespeople and drivers, non-exempt
13 salespeople, and special events workers.

14
15 3. LEGAL ISSUES

16
17 The primary disputed point of law will be whether employers are required only to
18 make meal periods available to employees, or whether employers are required to ensure
19 employees take them. Labor Code § 226.7 states in pertinent part "If an employer fails to
20 *provide* an employee a meal period or rest period ... the employer shall pay the employee
21 one additional hour of pay at the employee's regular rate of compensation for each work
22 day that the meal or rest period is not provided." Cal. Labor Code § 226.7 (emphasis
23 added). Currently, there is a split between one state court and one federal district court on
24 the issue of what it means to "provide" an employee with a meal period. In Cicairos v.
25 Summit Logistics, Inc., 133 Cal. App. 4th 949 (2005), the court stated that employers have
26 and affirmative obligation to ensure that workers are actually relieved of all duty. 133 Cal.
27 App. 4th at 963. However, in White v. Starbucks Corp., 497 F. Supp. 2d 1080 (N.D. Cal.
28 2007), the Honorable Vaughn Walker disagreed with the Court of Appeal decision in

1 Cicairos and held that under sections 512(a) and 226.7, "the California Supreme Court ...
2 would require only that an employer offer meal breaks, without forcing employers actively
3 to ensure that workers are taking these breaks," and stated that "the employee must show
4 that he was forced to forego his meal breaks as opposed to merely showing that he did not
5 take them regardless of the reason." 497 F. Supp. 2d at 1088-1089.

6
7 There may also be a legal dispute as to how many payments Labor Code § 226.7
8 provides per day for missed meal periods and rest breaks. Plaintiff seeks an extra hour of
9 pay under § 226.7 for each day a meal period was not provided, and also seeks an
10 additional hour of pay under § 226.7 for each day PBG failed to authorize and permit
11 Plaintiff to take a rest break. The Parties dispute whether or not Plaintiff may recover
12 multiple payments under § 226.7 for missed meal and rest breaks in the same day. PBG's
13 position is that the plain language of the statute limits Plaintiff's recovery to one additional
14 hour of pay per day regardless of how many missed meal periods and rest breaks occurred
15 in that day. See Cal. Labor Code § 226.7 (employee is entitled to "one additional hour of
16 pay ... for each work day that the meal or rest period is not provided.") (Emphasis added)).

17
18 4. MOTIONS

19
20 There are no prior or pending motions.

21
22 PBG believes jurisdiction does exist under CAFA. Plaintiff believes that no subject
23 matter jurisdiction exists under CAFA. If Defendant does not agree to remand the case to
24 State Court, or make a verified showing the matter in controversy exceeds five million
25 dollars, then Plaintiff expects to file a motion to remand.

26
27 Upon resolution of jurisdictional issues and completion of necessary discovery on
28 class certification issues, Plaintiff anticipates filing a motion for class certification.

1 If discovery disputes arise then motions may be necessary on such issues. Typical
2 disputes in this arena involve discoverability of purported class member names and contact
3 information.

4
5 PBG does not at this time anticipate filing any motions. However, if the parties do
6 not reach settlement, as they anticipate, PBG may file a motion, for example a motion for
7 summary adjudication on what it means to "provide" a meal period, as outlined above.

8
9 5. AMENDMENT OF PLEADINGS

10
11 At this point neither PBG nor the Plaintiff anticipates amending the pleadings.
12 However, both Parties reserve their right to do so.

13
14 6. EVIDENCE PRESERVATION

15
16 PBG has instituted a broad litigation hold to ensure both hard copy documentary
17 evidence and electronic documents and data are preserved. This litigation hold covers the
18 entire limitations period alleged in the Complaint and all DSD employees covered by the
19 allegations in the Complaint. It includes interdiction of all relevant documents – and
20 cessation of all destruction programs and ongoing erasures of e-mails, voice mails, and
21 other electronically-recorded materials.

22
23 7. DISCLOSURES

24
25 The Parties have agreed to exchange Fed. R. Civ. P. 26 initial disclosures prior to
26 the November 1 Case Management Conference.

1 8. DISCOVERY

2
3 No discovery has been served to date.

4
5 The Parties anticipate initially an informal exchange of information, followed by
6 any necessary discovery.

7
8 The Parties have discussed attempting to settle this case prior to the Plaintiff filing a
9 motion for class certification. However, if Plaintiff were to file such a motion, the Parties
10 reserve the right to ask the Court to modify discovery limits in order to allow for the taking
11 of more depositions.

12
13 9. CLASS ACTIONS

14
15 If the Parties are unsuccessful in settling this action, they anticipate Plaintiff will
16 file a motion for class certification.

17
18 10. RELATED CASES

19
20 On August 31, 2007, PBG filed its Notice of Pendency of Other Action or
21 Proceeding in accordance with Local Rule 3-13. There are two related cases:

22
23 1. Brett M. Goodman, Mario C. Mayorga, and Jaime J. Carmona v. The Pepsi
24 Bottling Group, Inc. and New Bern Transport Corp., Superior Court for the State of
25 California, County of Ventura (Case No. CIV 241341) (herein "Goodman"). The original
26 Goodman complaint was filed on May 26, 2006. The Goodman plaintiffs sought to
27 represent a class of "all persons employed by [PBG] in the position of Route or Delivery
28 Driver [delivery drivers] in the State of California (or persons with the equivalent position

1 however titled)." The Goodman plaintiffs alleged that during the four year period
2 preceding the filing of their complaint, PBG (1) failed to provide delivery drivers with
3 meal periods and rest breaks as required by California law; (2) failed to correctly
4 compensate deliver drivers for all hours worked, including for overtime and minimum
5 wages, as required by California law; (3) failed to provide properly itemized wage
6 statements to delivery drivers; and (4) engaged in unfair, unlawful, or fraudulent business
7 practices and unfair competition based on the aforementioned violation. After engaging in
8 significant litigation, discovery, and negotiations, PBG and the Goodman plaintiffs
9 reached settlement. On August 15, 2007, the Goodman plaintiffs moved for preliminary
10 approval of the settlement, and on August 28, 2007, Judge Steven Hintz of the California
11 Superior Court for the County of Ventura granted preliminary approval of that settlement.
12 Notice has been sent to all class members in the Goodman action and the hearing on final
13 approval of the settlement is set for December 3, 2007.

14
15 2. Andres O'campo and Frank DeMera v. The Pepsi Bottling Group, Inc. and
16 Bottling Group, LLC, United States District Court for the Central District of California,
17 Southern Division (Case No. SACCV07-866 CJC JCx). On July 3, 2007, the O'campo
18 plaintiffs filed a class action lawsuit on behalf of all PBG Merchandisers. Like the
19 Goodman plaintiffs, the O'campo plaintiffs assert that PBG (1) failed to provide
20 merchandisers with meal periods and rest breaks as required by California law; (2) failed
21 to correctly compensate merchandisers for all hours worked, including overtime wages, as
22 required by California law; (3) failed to provide merchandisers with properly itemized
23 wage statements; and (4) engaged in unfair, unlawful, or fraudulent business practices and
24 unfair competition based on the aforementioned failures. PBG and the O'campo plaintiffs
25 informally exchanged a significant amount of information concerning PBG's
26 merchandisers, as well as information pertaining to the Goodman class action. After
27 numerous meetings and extensive negotiation, PBG and the O'campo plaintiffs reached
28 settlement. The O'campo plaintiff's Motion for Preliminary Approval of Settlement is

1 currently pending before the United States District Court for the Central District of
2 California.

3
4 As both the Goodman and O'campo classes include as class members individuals
5 who also fit within the definition of the class alleged by the Plaintiff in this matter, this
6 class action will be significantly narrowed by the settlements in Goodman and O'campo.

7
8 11. RELIEF

9
10 Plaintiff's complaint seeks the following:

- 11
12 (1) An order permitting the action to proceed as a class action;
- 13
14 (2) With respect to Plaintiff's first cause of action for missed meal periods: (i)
15 declaratory judgment that PBG violated the law; (ii) an additional hour of
16 pay under Cal. Labor Code § 226.7 for each missed meal period; (iii)
17 accrued interest; (iv) attorneys fees; and (v) punitive damages.
- 18
19 (3) With respect to Plaintiff's second cause of action for missed rest breaks: (i)
20 declaratory judgment that PBG violated the law; (ii) an additional hour of
21 pay under Cal. Labor Code § 226.7 for missed rest periods; (iii) accrued
22 interest; (iv) attorneys fees; and (v) punitive damages.
- 23
24 (4) With respect to Plaintiff's third cause of action for failure to pay minimum
25 wage: (i) declaratory judgment that PBG violated the law; (ii) unpaid
26 compensation, interest and penalties thereon; (iii) attorneys fees; and (iv)
27 interest.
- 28

1 (5) With respect to Plaintiff's fourth cause of action for failure to timely pay
2 wages: (i) declaratory judgment that PBG violated the law; (ii) waiting time
3 penalties in the form of 30 days wages; and (iii) actual damages, reasonable
4 attorneys fees and costs.

5
6 (6) With respect to Plaintiff's fifth cause of action under California's Business
7 and Professions Code: (i) an order of disgorgement; (ii) injunctive relief;
8 and (iii) restitution.

9
10 (7) With respect to Plaintiff's sixth cause of action under California's Private
11 Attorney Generals Act, Plaintiff seeks civil penalties.

12
13 Plaintiff contends damages would be calculated as follows: Penalties for missed
14 meal periods and/or rest breaks would be calculated at a rate of one hour of pay per
15 penalty. Any damages for unpaid hours worked would be calculated in accordance with
16 the employees' hourly rates, and/or overtime rates, if applicable.

17
18 12. SETTLEMENT AND ADR

19
20 As noted above, two cases have recently been settled regarding identical claims for
21 very similar groups of employees. As such, PBG believes that most of the necessary
22 factual investigation has been done in those cases and PBG intends to share the results of
23 that investigation with Plaintiff. PBG's attorneys have worked with Plaintiff's attorneys in
24 other cases involving similar issues and the Parties have reason to believe that this action
25 should settle, likely without assistance. However, if the Parties are unable to settle without
26 assistance, they agree that either private or court-ordered mediation would be the most
27 appropriate form of ADR.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The Parties will not consent to have a magistrate judge conduct all further proceedings, including trial and entry of judgment.

14. OTHER REFERENCES

The Parties do not believe any other references are appropriate.

15. NARROWING OF ISSUES

As noted above, Plaintiff's purported class was narrowed by settlements in the Goodman and O'campo cases.

The Plaintiffs do not believe any additional narrowing of issues is possible.

16. EXPEDITED SCHEDULING

An expedited schedule would not be appropriate in this case.

17. SCHEDULING

The Parties believe they may be able to settle this matter and would like the Court to consider scheduling matters to allow them to fully explore settlement. To that end, the Parties propose the following deadlines:

Designation of experts relating to class certification: March 1, 2008

1 Class certification motion to be filed: May 1, 2008

2
3 Discovery cut-off: January 15, 2009

4
5 Other dispositive motions to be filed: March 15, 2009

6
7 Designation of trial experts: April 2009

8
9 Pretrial conference: June 2009

10
11 Trial: June 2009

12
13 18. TRIAL

14
15 Plaintiff demanded a jury trial. The Parties estimate a trial would last
16 approximately two weeks.

17
18 19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

19
20 Plaintiff will file his certification of interested persons shortly. On August 1, 2007,
21 PBG filed its "Certification of Interested Entities or Persons" required by Civil Local
22 Rule 3-16. PBG's certification states as follows:

23
24 "Pursuant to Local Rule 3-16, and to enable the Court to evaluate possible
25 disqualification or recusal, the undersigned counsel for Defendant The Pepsi Bottling
26 Group, Inc. (erroneously sued as "The Pepsi Bottling Group") (herein "PBG") certifies
27 that the following persons or entities may have a pecuniary interest in the outcome of
28 this case:

1. Plaintiff Jose Castellanos

2. Defendant The Pepsi Bottling Group, Inc.
3. PepsiCo, Inc.
4. Bottling Group, LLC
5. New Bern Transport Corporation

Pursuant to FRCP 7.1, the undersigned counsel for PBG certifies that the following are PBG's corporate parents and publicly held corporations that own 10% or more of PBG's stock:

The Pepsi Bottling Group, Inc. is a publicly traded company with approximately 60% of its stock owned by the public and approximately 40% of its stock owned by PepsiCo, Inc.

PepsiCo, Inc. is a publicly traded company."

20. OTHER

As noted above, the Parties believe that due to the recent settlement of two related cases, they will be able to settle this action relatively quickly and inexpensively.

Dated: October 25, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Samantha Hardy

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Attorneys for Defendant THE PEPSI BOTTLING
GROUP, INC.

1 Dated: October 25, 2007

2 RIGHETTI LAW FIRM, P.C.

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4
5 By /s/ John Glugoski
6 JOHN GLUGOSKI

7 Attorneys for Plaintiff JOSE CASTELLANOS
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